

Placement of Child Pending Trial

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8.1 Requirements to Release or Place Child Pending Trial

A. Requirements to Release the Child

If the petition is authorized for filing,* the court may release the child in the custody of either of his or her parents, or the child's guardian or custodian, under reasonable terms and conditions believed necessary for the child's physical health or mental well-being. MCR 5.965(B)(10) and MCL 712A.13a(3); MSA 27.3178(598.13a)(3).

The respondent does not have the right to post bail for the release of a child in the custody of the court. MCR 5.965(C)(5).

*See Chapter 7 for a discussion of authorization of a petition at a preliminary hearing.

B. Requirements to Place the Child When Neglect Is Alleged

If the petition is authorized for filing, the court may also order placement of the child outside of his or her home. The respondent must be given an opportunity to cross-examine witnesses, to subpoena witnesses, and to offer proof to counter the allegations against respondent. MCR 5.965(C)(1). In making its placement decision, the court may consider hearsay evidence that possesses adequate guarantees of trustworthiness. MCR 5.965(C)(3).

MCR 5.965(C)(1) provides that if a child is not released following the preliminary hearing, the court must receive evidence to establish that the *required criteria* for placement are satisfied. The court rule governing pretrial placement, MCR 5.965(C), contains three criteria that must be met before placement of the child may be ordered. Those criteria are:

- F custody of the child with the parent presents a substantial risk of harm to the life, physical health, or mental well-being of the child;
- F no provision of service or other arrangement except removal of the child is reasonably available to adequately safeguard the child from the risk as described above; and
- F conditions of child custody away from the parent are adequate to safeguard the health and welfare of the child.

MCR 5.965(C)(2)(a)–(c).

However, a recent amendment to the statute governing pretrial placement, MCL 712A.13a; MSA 27.3178(598.13a), eliminated from the statute the criteria upon which MCR 5.965(C)(2) was based. See 1997 PA 163. Prior to that amendment, the relevant statutory provision, MCL 712A.13a(7)(a)–(b); MSA 27.3178(598.13a)(7)(a)–(b), required the court to find before placing a child that both of the following conditions existed:

- F custody of the child with a parent, guardian, or custodian presents a substantial risk of harm to the child’s life, physical health, or mental well-being and no provision of service or other arrangement except removal of the child is reasonably available to adequately safeguard the child from such risk, and
- F conditions of custody of the child away from a parent, guardian, or custodian are adequate to safeguard the child’s health and welfare.

At the same time that these criteria were eliminated from the statute, another amendment to MCL 712A.13a; MSA 27.3178(598.13a), added subsections (2), (4), and (5). These subsections contain criteria applicable to cases involving allegations of *abuse* and allow the court to order an alleged abuser out of the child’s home, or to place the child outside the home.* As a result, there are currently no criteria contained in MCL 712A.13a; MSA 27.3178(598.13a), to guide a court in deciding whether to place the child outside of the home in cases of alleged *neglect*. Therefore, the criteria contained in MCR 5.965(C)(2) may still be instructive when neglect is alleged and the court is trying to decide whether removal of the child from parental custody is warranted.

*See Sections 8.3 and 8.4, below, for a detailed discussion of these provisions.

If not released, the child must be placed in the most family-like setting consistent with the needs of the child. MCR 5.965(C)(4), MCL 712A.13a(10); MSA 27.3178(598.13a)(10), and MCL 712A.1(3); MSA 27.3178(598.1)(3).

C. Temporary Placement Pending Completion of Preliminary Hearing

If the preliminary hearing is adjourned or continued,* the court may make temporary orders for the protection of the child pending appearance of counsel or pending completion of the hearing. MCR 5.965(B)(2).

*See Section 7.5 for a discussion of the limitations on adjourning or continuing the preliminary hearing.

8.2 Type of Placements Available

“Placement” of the child means court-approved removal of a child from the parental home and placement in foster care, in a shelter home, in a hospital, or with a private treatment agency. MCR 5.903(C)(6). “Foster care” means care provided to a child in a foster family home or group home, a child caring institution, or a relative’s home* pursuant to a court order. MCR 5.903(C)(4) and MCL 712A.13a(1)(d); MSA 27.3178(598.13a)(1)(d). Placement often occurs through an “agency.” See MCL 712A.13a(1)(a); MSA 27.3178(598.13a)(1)(a) (definition of “agency”).

*See Benchnote 6 for a discussion of “kinship care.”

If not released, the child must be placed in the most family-like setting consistent with the needs of the child. MCR 5.965(C)(4), MCL 712A.13a(10); MSA 27.3178(598.13a)(10), and MCL 712A.1(3); MSA 27.3178(598.1)(3).

The court must inquire whether a member of the child’s immediate or extended family is available to take custody of the child, whether there has been a central registry clearance, and whether a criminal history check has been initiated. MCR 5.965(C)(4).*

*See Section 2.19 for a discussion of the central registry.

If the child is placed in a relative’s home, within seven days of the placement, the central registry clearance and criminal history check must be performed by the Family Independence Agency. In addition, the court must order a home study to be performed and a copy of the home study to be submitted to the court not more than 30 days after the placement. MCL 712A.13a(9); MSA 27.3178(598.13a)(9).*

*See Section 8.13, below, for additional discussion of “relative placements.”

Note: A 1997 amendment to the Child Care Organizations Act eliminated one barrier to placing siblings together in foster care. MCL 722.118b(1); MSA 25.358(18b)(1), allows the Family Independence Agency, upon recommendation of a local Foster Care Review Board or a child placing agency, to grant a variance to licensing rules or statutes to allow a child and one or more siblings to be placed together. See also *FIA Services Manual, Children & Youth*, Item 722.2, p 2, and Item 722.3, p 7, which outlines the procedures followed to place siblings together in foster care or to maintain contact between siblings when they are placed separately in foster care.

8.3 Required Considerations When Petition Alleges Severe Physical Injury or Sexual Abuse of Child

*See Sections 2.2(A) and 2.12 for definitions of “severe physical injury” and “sexual abuse.”

*See Section 7.19.

*See Section 8.4, below.

Within 24 hours after the Family Independence Agency determines that a child was severely physically injured or sexually abused,* the agency must file a petition seeking Family Division jurisdiction under MCL 712A.2(b); MSA 27.3178(598.2)(b). MCL 722.637; MSA 25.248(17). In such cases, the court must at least consider the following:

- F ordering the alleged abuser to leave the child’s home,* and
- F regardless of whether the alleged abuser is ordered to leave the child’s home, ordering the child placed in licensed foster care unless the conditions of custody at the placement and with the individual with whom the child is placed are adequate to safeguard the child from the risk of harm to the child’s life, physical health, or mental well-being.*

MCL 712A.13a(2), (4), and (5); MSA 27.3178(598.13a)(2), (4), and (5).

*See Form JC 65.

8.4 Required Findings to Release Child to Parent or Place Child in Unlicensed Foster Care When Abuse Is Alleged*

As a general rule, if the petition is authorized for filing, the court may release the child to either of the child’s parents, the child’s guardian, or a custodian under reasonable terms and conditions believed necessary for the child’s physical health or mental well-being. MCL 712A.13a(3); MSA 27.3178(598.13a)(3), and MCR 5.965(B)(10).

*See Section 7.23 for a definition of “nonparent adult.”

However, if the petition alleges abuse by a parent, guardian, custodian, or nonparent adult,* the court shall not leave the child in or return the child to the child’s home, or place the child in unlicensed foster care, unless the court finds that the conditions of custody at the placement and with the individual with whom the child is placed are adequate to safeguard the child from the risk of harm to the child’s life, physical health, or mental well-being. MCL 712A.13a(5); MSA 27.3178(598.13a)(5). These findings are required regardless of whether the court orders the alleged abuser from the child’s home under MCL 712A.13a(4); MSA 27.3178(598.13a)(4).

“Abuse” by a parent, guardian, custodian, or nonparent adult, for purposes of the provision above, is defined as one or more of the following:

- (a) Harm or threatened harm by a person to the child’s health or welfare that occurs through nonaccidental physical or mental injury.

(b) Engaging in sexual contact or sexual penetration as defined in MCL 750.520a; MSA 28.788(1),* with a child.

(c) Sexual exploitation of a child, which includes, but is not limited to, allowing, permitting, or encouraging a child to engage in prostitution, or allowing, permitting, encouraging, or engaging in photographing, filming, or depicting a child engaged in sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity.

(d) Maltreatment of a child.

MCL 712A.13a(15)(a)–(d); MSA 27.3178(598.13a)(15)(a)–(d).

The court may also order an alleged abuser to leave the home if the court finds probable cause to believe that abuse occurred.*

Note: For guidance on placement in cases involving domestic violence and child maltreatment, see National Council of Juvenile and Family Court Judges, *Effective Intervention in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice* (Reno: University of Nevada, Reno), forthcoming, and Lovik, *Domestic Violence Benchbook: A Guide to Civil & Criminal Proceedings* (MJJ, 1998), Section 1.8.

*See Section 2.2(A) for definitions of “sexual contact” and “sexual penetration.”

*See Section 7.19 for the requirements for ordering an alleged abuser from the child’s home.

8.5 Required Release of Information When Child Is Placed in Foster Care

If the child is placed in foster care,* the court must order that, within 10 days after receiving a written request, a child care agency must provide the person who is providing the foster care with copies of all initial, updated, and revised Case Service Plans and court orders relating to the child, and all of the child’s medical, mental health, and education reports, including reports compiled before the child was placed. MCL 712A.13a(13); MSA 27.3178(598.13a)(13), and MCL 712A.18f(5); MSA 27.3178(598.18f)(5).

Moreover, the court must include in its placement order:

(a) an order that the child’s parent, guardian, or custodian provide the supervising agency with the name and address of each of the child’s medical providers, and

(b) an order that each of the child’s medical providers release the child’s medical records. The order may specify providers by profession or type of institution.

MCL 712A.13a(14)(a)–(b); MSA 27.3178(598.13a)(14)(a)–(b).

The court, a child placing agency, or the Family Independence Agency may consent to routine, nonsurgical medical care, or emergency medical and surgical treatment if the minor is placed outside the home. MCL

*See Section 8.2, above, for a definition of “foster care.”

722.124a(1); MSA 25.358(24a)(1). See *In re Trowbridge*, 155 Mich App 785, 787–88 (1986) (psychological evaluations defined as routine care for emotionally disturbed children in temporary custody). Only the minor’s parent or legal guardian can consent to non-emergency elective surgery for a child in foster care. MCL 722.124a(3); MSA 25.358(24a)(3). The court, child placing agency, or Family Independence Agency must execute a written instrument investing the institution or organization with which the child is placed with authority to consent to routine nonsurgical or emergency medical care. MCL 722.124a(1); MSA 25.358(24a)(1).

8.6 Required Medical Examination of Child Placed in Foster Care

The child’s supervising agency must ensure that the child receives a medical examination within 30 days of placement. One objective of this initial examination is to provide a record of the child’s medical and physical status upon entry into foster care. MCL 722.954c(5); MSA 25.359(4c)(5). See MCL 722.952(1); MSA 25.359(2)(1) (definition of “supervising agency”).

If the child under the care of the supervising agency has suffered sexual abuse, serious physical abuse, or mental illness, the supervising agency must have an experienced and licensed mental health professional as defined in MCL 330.1100b(14)(a) or (b); MSA 14.800(100b)(14)(a) or (b), or a social worker certified under MCL 339.1606; MSA 18.425(1606), who is trained in children’s psychological assessments perform an assessment or psychological evaluation of the child. MCL 722.954c(4); MSA 25.359(4c)(4).*

The agency supervising the child’s care must obtain from the parent, guardian, or custodian the name and address of the child’s medical provider and a signed document for the release of the child’s medical records. The child’s medical provider must remain constant while the child is in foster care, unless the child’s current primary medical provider is a managed care health plan, or unless requiring the medical provider to remain constant would create an unreasonable burden for the relative, foster parent, or other custodian of the child. MCL 722.954c(1); MSA 25.359(4c)(1).*

8.7 Requirements for Establishing “Medical Passports”

A “medical passport” must be developed by the supervising agency for each child coming within its care. These must contain:

- (a) all medical information required by policy or law to be provided to foster parents;
- (b) basic medical history;
- (c) a record of all immunizations; and
- (d) any other information concerning the child’s physical and mental health.

*This requirement is effective April 1, 1998.

*See Section 8.5, above, for required orders by the court concerning the child’s medical information.

MCL 722.954c(2)(a)–(d); MSA 25.359(4c)(2)(a)–(d). Foster care workers who transfer medical passports must sign and date them, verifying that the worker has sought and obtained the required information and any additional information required by Family Independence Agency policy. MCL 722.954c(3); MSA 25.359(4c)(3).

8.8 Required Advice Concerning Initial Service Plans

If placement is ordered, the court must, orally or in writing, inform the parties:

(a) that the agency designated to care for and supervise the child will prepare an Initial Service Plan no later than 30 days of the placement;

(b) that participation in the Initial Service Plan is voluntary unless otherwise ordered by the court; and

(c) that the general elements of an Initial Service Plan include:

(i) the background of the child and the family;

(ii) an evaluation of the experiences and problems of the child;

(iii) a projection of the expected length of stay in foster care; and

(iv) an identification of specific goals and projected time frames for meeting the goals.

MCR 5.965(C)(6)(a)–(c) and MCL 712A.13a(8)(a)–(c); MSA 27.3178(598.13a)(8)(a)–(c). See *FIA Services Manual, Children & Youth*, Item 722.8.

Note: If the child has been removed from his or her home or placed in the home of a relative, responsibility for case service and management is transferred from Child Protective Services to Foster Care Services. Foster Care Services workers complete the Initial Services Plan and arrange parenting time and sibling visits. However, if the Family Independence Agency becomes aware of additional abuse or neglect while the child is under the court's jurisdiction, and if the abuse or neglect is substantiated, Child Protective Services must file the supplemental petition. See MCL 712A.19(1); MSA 27.3178(598.19)(1), and *FIA Services Manual, Children & Youth*, Item 712, pp 111–13, and Item 722.13.

8.9 Visitation of Child in Placement

*See MCL 712A.18f(3)(e); MSA 27.3178(598.18f)(3)(e), which specifies that “parenting time” must occur at least every seven days during the dispositional stage.

*See Section 13.4 (termination requested at initial dispositional hearing) and Chapter 18 (hearings on termination).

Unless visitation, even if supervised, would be harmful to the child, the court must ensure that the parent is allowed frequent* visitation of the child in placement. MCR 5.965(C)(7).

MCL 712A.13a(11); MSA 27.3178(598.13a)(11), contains additional requirements. If “parenting time,” even if supervised, may be harmful to the child, the statute requires the court to order a psychological evaluation of the child, counseling for the child, or both to determine the appropriateness and conditions of parenting time. The court may suspend parenting time while the psychological evaluation or counseling is being conducted. *Id.*

The supervising agency must institute a flexible schedule to allow for the occurrence of supervised in-home visitation outside of the traditional workday to accommodate the schedules of the persons involved. MCL 722.954b(3); MSA 25.359(4b)(3).

If a petition requesting termination of parental rights has been filed, parenting time for a parent who is the subject of the petition is automatically suspended and, except as described below, remains suspended at least until a decision is issued on the termination petition. If, however, a parent whose parenting time has been suspended establishes, and the court determines, that parenting time will not harm the child, the court may order parenting time in the amount and under the conditions the court determines appropriate. MCL 712A.19b(4); MSA 27.3178(598.19b)(4).*

8.10 Order for Examination or Evaluation of Parent or Child

The court may order that a minor or parent be examined or evaluated by a physician, dentist, psychologist, or psychiatrist. MCR 5.923(B). See also MCL 712A.12; MSA 27.3178(598.12) (after petition has been filed, court may order further investigation, including examination by physician, dentist, psychologist, or psychiatrist).

Persons or agencies providing testimony, reports, or other relevant and material information at the court’s request following authorization of a petition are immune from any subsequent legal action with respect to furnishing the information to the court. MCR 5.924.

8.11 Required Findings When Placement Is Ordered*

If the court orders placement, it must make a written statement of findings or place them on the record. MCR 5.965(C)(3).

*See Form JC 11.

Note: Under federal law, a court is required to make a finding that “reasonable efforts” have been made to avoid non-emergency removal of a child from his or her home and placement of the child in foster care. 42 USC 672(a). This requirement must be met to maintain “Title IV–E” funding. See Benchnotes 2 and 3.

8.12 Required Review of Placement and Initial Service Plan

A. On Motion of a Party

On motion of a party, the court must review the custody order, placement order, or Initial Service Plan and may modify the orders or plan if it is in the best interest of the child. MCR 5.965(C)(8) and MCL 712A.13a(12); MSA 27.3178(598.13a)(12). See also MCR 5.993(A)(1)(3)–(4), which require a judge, when requested by a party, to review a referee’s recommended findings and conclusions with regard to placement, or to avoid manifest injustice in any case.*

“Party” includes the petitioner, child, respondent parent, or other parent or guardian. MCR 5.903(A)(13)(b).

*See Chapter 14 for a detailed discussion of review of referees’ recommended findings and conclusions.

B. Following Notification of Supervising Agency’s Placement Decision

Upon the child’s removal from parental custody, as part of the Initial Service Plan, the child’s supervising agency must, within 30 days, identify, locate, and consult with relatives to determine placement with a fit and appropriate relative who would meet the child’s developmental, emotional, and physical needs. Such a “relative placement” would be an alternative to foster care. MCL 722.954a(2); MSA 25.359(4a)(2).

Not more than 90 days after the child’s removal, the supervising agency must make a placement decision and document the reasons for the decision in writing, and give written notice of the placement decision and supporting reasons to the following persons:

- F the child’s attorney;
- F the child’s guardian;
- F the child’s guardian ad litem;
- F the child’s mother;
- F the child’s father;
- F the attorneys for the mother and father;
- F each relative who expresses an interest in caring for the child;

- F the child if he or she is old enough to express an opinion regarding placement; and
- F the prosecuting attorney.

MCL 722.954a(2)(a)–(b); MSA 25.359(4a)(2)(a)–(b).

Any of these persons may request in writing and within five days written documentation of the reasons for the placement decision. If the person disagrees with the placement decision, that person may request review of the decision by the child’s attorney. MCL 722.954a(3); MSA 25.359(4a)(3).

If the child’s attorney determines that the placement is not in the child’s best interest, he or she must petition the court that placed the child, within 14 days of the date of the supervising agency’s written decision, for a review hearing. The court must commence the review hearing not more than seven days after the date of the petition, and the hearing must be held on the record. MCL 722.954a(3); MSA 25.359(4a)(3).

Note: The court is required to appoint a “lawyer-guardian ad litem” for the child. In some circumstances, the court may also appoint an “attorney,” and/or a “guardian ad litem.” See MCL 712A.13a(1)(b), (e), and (f); MSA 27.3178(598.13a)(1)(b), (e), and (f). For purposes of a required notice, “attorney” includes “lawyer-guardians ad litem.” The appointment of counsel for a child is discussed in detail in Sections 7.10–7.13.

*See Benchnote 8 for a discussion of the function of the Foster Care Review Board.

*See Section 8.17, below, for required procedures in such circumstances.

8.13 Restrictions on Changes of Child’s Foster Care Placement*

Unless there is reasonable cause to believe that the child has suffered sexual abuse or nonaccidental physical injury, or that there is substantial risk of harm to the child’s emotional well-being,* changes in the placement of a child in foster care are restricted to certain circumstances.

The agency responsible for the care and supervision of the child shall change the child’s foster care placement only under one of the following conditions:

- (a) the person providing the foster care requests or agrees to the change;
- (b) even though the person providing the foster care objects to a proposed change in placement:
 - (i) the court orders the child returned home, or
 - (ii) the change in placement is less than 30 days after the child’s initial removal from his or her home, or

(iii) the change in placement is less than 90 days after the child's initial removal from his or her home, and the new placement is with a relative, or

(iv) the change in placement is in accordance with other provisions of [MCL 712A.13b; MSA 27.3178(598.13b)].*

MCL 712A.13b(1)(a)–(b); MSA 27.3178(598.13b)(1)(a)–(b).

*See Section 8.16, below, on reviews of changes in placement.

8.14 Required Notices Prior to Changes of Child's Foster Care Placement

Unless there is reasonable cause to believe that the child has suffered sexual abuse or nonaccidental physical injury, or that there is substantial risk of harm to the child's emotional well-being,* the agency responsible for the child's care and supervision must comply with certain requirements before changing the child's foster care placement.

*See Section 8.17, below.

Before the change in placement takes effect, the agency must:

- F notify the State Court Administrative Office of the proposed change;
- F notify the foster parents of the proposed change and that if they disagree with the proposed change, they may appeal within three business days to a Foster Care Review Board; and
- F maintain the current placement for not less than the three days, and if the foster parents do appeal, then maintain the placement until the Foster Care Review Board makes its determination.

MCL 712A.13b(2)(a)–(c); MSA 27.3178(598.13b)(2)(a)–(c).

8.15 Required Procedures for Appeals of Changes of Foster Care Placements

A. Investigation by Foster Care Review Board

After receiving an appeal from foster parents, the Foster Care Review Board must investigate the change or proposed change in placement. Within three days after receipt of the appeal, the FCRB must report its findings and recommendations to the court, foster care parents, parents, and the agency. MCL 712A.13b(3); MSA 27.3178(598.13b)(3).

A foster parent may appeal orally but must submit a written appeal immediately thereafter. MCL 712A.13b(2)(b); MSA 27.3178(598.13b)(2)(b).

B. Change in Child's Placement Pending Appeal to Family Division

If, after investigation, the Foster Care Review Board determines that the move is in the child's best interests, the agency may move the child. MCL 712A.13b(4); MSA 27.3178(598.13b)(4). However, if the FCRB determines that the change in placement is not in the child's best interests, the agency must maintain the child's current placement until a finding and order by the court. MCL 712A.13b(5); MSA 27.3178(598.13b)(5). The FCRB must then notify the court of the disagreement. MCL 712A.13b(5); MSA 27.3178(598.13b)(5).

8.16 Appeals to Family Division of Changes of Foster Care Placements

The court must set a hearing date no sooner than seven days and no later than 14 days after receipt of the notice from the FCRB. The court must give notice of the hearing to the foster parents, each interested party, and the prosecuting attorney if he or she has appeared in the case. MCL 712A.13b(5); MSA 27.3178(598.13b)(5).

The rules of evidence do not apply during the hearing. MCL 712A.13b(5); MSA 27.3178(598.13b)(5). After hearing testimony from the agency and any other interested party and considering any other evidence bearing upon the proposed change in placement, the court must order the continuation or restoration of the placement unless the court finds that the proposed change in placement is in the child's best interests. MCL 712A.13b(6); MSA 27.3178(598.13b)(6).

8.17 Emergency Change in Child's Foster Care Placement

If the agency responsible for the child's care and supervision has reasonable cause to believe that the child has suffered sexual abuse or nonaccidental physical injury, or that there is substantial risk of harm to the child's emotional well-being, the following rules apply:

- F** The agency may change the child's foster care placement without adhering to the time requirements in MCL 712A.13b(1); MSA 27.3178(598.13b)(1), or the notice requirements in MCL 712A.13b(2)(b) and (c); MSA 27.3178(598.13b)(2)(b) and (c).^{*} The agency must only notify the State Court Administrative Office as required by MCL 712A.13b(2)(a); MSA 27.3178(598.13b)(2)(a).
- F** As in other cases, the foster parent may appeal the change in placement to the FCRB within 3 days after the child's removal. Although the foster parent may appeal orally, a written appeal must be filed immediately thereafter. MCL 712A.13b(7); MSA 27.3178(598.13b)(7).

^{*}See Sections 8.13 and 8.14, above, for these time and notice requirements.

- F The child may not be returned to the foster care placement without a court order. MCL 712A.13b(5); MSA 27.3178(598.13b)(5). The court must order the continuation or restoration of the placement unless the court finds that the proposed change in placement is in the child's best interests. MCL 712A.13b(6); MSA 27.3178(598.13b)(6).

8.18 Order Following Preliminary Hearing

At the conclusion of the preliminary hearing, the court must make its findings and enter an order. See Form JC 11. Also, MCR 5.965(C)(3) requires the court to make a written statement of findings or place them on the record if placement is ordered following a preliminary hearing.

